

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
YESHITILA WUHIB,) OTA NO. 18083656
)
) APPELLANT.)
)
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TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, June 17, 2020

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
12900 Park Plaza Dr., Suite 300, Cerritos,
California, 90703, commencing at 9:14 a.m.
and concluding at 9:58 a.m. on Wednesday,
June 17, 2020, reported by Ernalyn M. Alonzo,
Hearing Reporter, in for the State of California.

1 APPEARANCES:
2
3 Panel Lead: ALJ ANDREW WONG
4
5 Panel Members: ALJ JOSHUA ALDRICH
6 ALJ KEITH LONG
7
8 For the Appellant: ARNOLD J. BLANSHARD
9
10 For the Respondent: STATE OF CALIFORNIA
11 DEPARTMENT OF TAX AND
12 FEE ADMINISTRATION
13 By: RANDY SUAZO
14 JASON PARKER
15 CHRISTOPHER BROOKS
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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-9 were received at page 6.)
(Department's Exhibits A-I were received at page 6.)

P R E S E N T A T I O N

	<u>PAGE</u>
By Mr. Blanshard	7
By Mr. Suazo	22

CLOSING STATEMENT

	<u>PAGE</u>
By Mr. Blanshard	28

1 Cerritos, California; Wednesday, June 17, 2020

2 9:14 a.m.

3

4 JUDGE WONG: We are now going on the record.

5 We are opening the record in the appeal of

6 Yeshitila Wuhib for the Office of Tax Appeals in OTA Case

7 Number 18083656. Today is Wednesday June 17th, 2020. The

8 time is 9:14 a.m. We're holding this hearing by video

9 conference but the location, for the record, is

10 technically, Cerritos, California.

11 I am lead Administrative Law Judge Andrew Wong,

12 and with me today is Judge Josh Aldrich and

13 Judge Keith Long. We are the panel hearing and deciding

14 this case. Individuals representing Appellant or taxpayer

15 please identify yourselves and spell your names for the

16 record. Mr. Blanshard?

17 MR. BLANSHARD: Arnold Blanshard, A-r-n-o-l-d

18 B-l-a-n-s-h-a-r-d.

19 JUDGE WONG: This is Judge Wong. Thank you.

20 Individuals representing the California

21 Department of Tax and Fee Administration or CDTFA, please

22 identify yourselves and spell your names for the record.

23 MR. SUAZO: Randy Suazo, hearing representative,

24 Randy, R-a-n-d-y, Suazo, S-u-a-z-o.

25 MR. PARKER: Jason Parker, hearing

1 representative, J-a-s-o-n P-a-r-k-e-r.

2 MR. BROOKS: Christopher Brooks, tax counsel,
3 Christopher, C-h-r-i-s-t-o-p-h-e-r, Brooks, B-r-o-o-k-s.

4 JUDGE WONG: This is Judge Wong. Thank you.

5 We're considering one issue today, whether
6 further adjustments are warranted to the measure of
7 unreported taxable sales.

8 Appellant has identified and submitted Exhibits 1
9 through 9 as evidence. Appellant has no other exhibits to
10 offer as evidence, and CDTFA has no objections to them.
11 Therefore, Appellant's Exhibits 1 through 9 will be
12 admitted into the record as evidence.

13 (Appellant's Exhibits 1-9 were received
14 in evidence by the Administrative Law Judge.)

15 JUDGE WONG: CDTFA has identified and submitted
16 Exhibits A through I as evidence. CDTFA has no other
17 exhibits to offer as evidence, and Appellant has no
18 objections to them. Therefore, CDTFA's Exhibits A through
19 I will be admitted into the record as evidence.

20 (Department's Exhibits A-I were received in
21 evidence by the Administrative Law Judge.)

22 JUDGE WONG: Appellant has no witnesses today,
23 and CDTFA also has no witnesses. I believe we are ready
24 to proceed with the presentations.

25 Mr. Blanshard, please proceed.

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PRESENTATION

MR. BLANSHARD: Good morning, Your Honor.

My name is Arnold Blanshard, and I'm representing my client. The issue in front of you today as stated, how to do the calculation of taxable sales. One of the main issues is the sample selection that was made by the CDFA [sic]. And the selection was made based upon judgment.

Now, the board at that time -- was the State Board of Equalization -- had a sample manual that indicates that for them to select a sample, there must be a conversation with the -- with the taxpayer, the client, and there has to be an agreement on that sample selection; whether it be statistics or just by judgment. The issue we have here, when that sample was selected, there was no conversation with me. I was part of the -- the team on my client side, and that selection was. And a projection was made based upon those two months.

The State manual -- sample manual further stated that when you make a selection, it must be representative of the calculation, and this is an audit standard. Whenever you do an audit, your sample selection must be representative of the population. If the sample is not representative of the population, that sample must be scrapped, throw away trash, and select another sample that

1 is representative of the population.

2 The main issue we have at this time, Your Honor,
3 has to do with that sample selection. From the get go we
4 informed sample the -- I'm going to be using the State
5 Board of Equalization because that's what we had at that
6 time, if you don't mind. The State Board of Equalization,
7 we told them once that selection was made, that that
8 sample was outside of the normal routine process of our
9 business.

10 The State -- the Board -- the State Board of
11 Equalization said, "Well, that's fine. You can go ahead
12 and show us what you have to prove."

13 We went in. We did four months of samples
14 randomly selected, and came back and showed the State
15 Board of Equalization that their sample was totally wrong.
16 It was far off. All of those months when we did a 30 to
17 31 percent spread of -- between the purchase of taxable
18 and nontaxable sales. The Board's selection, one was
19 95 percent of taxable sales and the other one was
20 80 percent of taxable sales. Our selection was 60 --
21 within 60 and 65 percent of taxable sales based upon the
22 purchase segregation.

23 The Board decided that they were going to
24 comingle both their selection and our selection. They're
25 going to comingle both of them and use an average. We

1 insisted on the fact that no, you can't do that. Your
2 sample is out of the norm. This -- the months you
3 selected are extraordinary months. They're outside the
4 normal business of our -- of what we do. We did four.
5 You did two, and we've proven to you that that's not the
6 case.

7 So we went in circles with this. We -- there was
8 a hearing set up that was supposed to be held that was
9 called off because we -- there was -- one of these judges
10 was talking to the representative and was trying to get
11 more information from us. And it felt like, yes, we are
12 on the right track. So they pulled it. This -- this case
13 has been pulled, like, maybe four times. Three times by
14 the State, and one time by us. We're ready for hearing.

15 So the issue still continues to be that the
16 sample that was selected was way out of the norm.
17 Furthermore, what the State Board of Equalization did,
18 they decided at one particular point that, you know what,
19 the issue we have when they made the selection, the phone
20 cards were not purchased for those two months, okay.
21 Which our phone card is really almost of about -- which
22 really is 15 to 20 -- 15 percent or 20 percent of the
23 nontaxable sales. And that's what created a problem.

24 The State decided at that -- the State Board of
25 Equalization decided at one point that we should furnish

1 them. When we have that conversation, they we should
2 furnish them with the information of the phone cards that
3 we -- we have. We told them we don't have all of the
4 documentation for the phone cards. We have some of them
5 because it's been so long, and that we give them a
6 spreadsheet. And they said, no, they're not going to
7 accept the spreadsheet. They want to see actual invoices.

8 We went back to your clients -- to our vendor and
9 requested to see if they had invoices that they can give
10 us. They give us some of the invoices. We provided those
11 invoices with a spreadsheet to the State Board of
12 Equalization. The State Board of Equalization then made
13 the decision on their own that they're just going to
14 exclude it since they have a total population of the phone
15 cards. They're going to take that out of the -- that's
16 the population, and then use whatever they have as a
17 projection. So now the population excluded the phone
18 cards.

19 Without that, that was not right. Because again,
20 we are still inching on the fact that their sample that
21 was done was incorrect, and that sample should have been
22 scrapped in the first place. With the spread of this --
23 this discrepancy, we realize that there was a 20 percent
24 swing of what is now included in the taxable sales, that
25 my client has been assessed.

1 Your Honor, may I state for the record that when
2 a sales tax is issued to an individual or a company, the
3 intent of the Board of Equalization is not to penalize
4 that taxpayer. Rather, it is to assist the Board in
5 collecting the sales tax. On no instance did my client
6 collect the tax that has now been assessed on them. They
7 never did. This sample is projecting that those taxes
8 should be paid -- that my client should pay those taxes
9 because of a sample that's not representative of the
10 population.

11 Furthermore, I attached an exhibit -- I think
12 it's the last exhibit on my packet -- in which the
13 State -- the auditor was having an issue regarding the
14 price that we're selling our products for. And she came
15 up -- she send me an e-mail and said what we have -- what
16 I did is a bit off. Can you go back and give us a
17 document of what your prices are?

18 When my client went in and went through and did
19 all the pricing and send it back to her, she wrote that
20 e-mail to me telling me that, you know, the prices are
21 very low, that there's no way it will pass audit. And so,
22 therefore, we should come up with something that is within
23 the norm of the liquor store, which is about whatever
24 percent is listed on that exhibit.

25 We thought that we already informed the State

1 that our liquor store -- our store is not a typical liquor
2 store because our store doesn't sell the amount of liquor
3 that normally a store of that nature would be. We sell
4 other products. For example, we have African food
5 products that we sell. The store -- the owner of the
6 store is Ethiopian from Ethiopia. And the people that
7 knows that she sells Ethiopian products goes there to buy
8 Ethiopian products.

9 And additionally, because of the -- at that time
10 phone -- at that time cell phone was not as accessible as
11 it is now in which you have all these apps that you can
12 use for free without having to buy a phone card. A phone
13 card was the only avenue that people from Africa or other
14 country was using to communicate to their relatives back
15 in that -- in those countries.

16 And, therefore, phone card was one of the typical
17 products that was being sold in the store. One of the top
18 products that was being sold in that store because a lot
19 of Ethiopians and Africans in that neighborhood knows that
20 store has those phone cards. And so that was one of the
21 sources that was bringing in -- not truly the liquor that
22 normal liquor store would have.

23 And so, therefore, when I informed the auditor at
24 that time that this is the issue, well, she said no.
25 Unfortunately, this store is identified as a liquor store

1 and, therefore, whatever price we give them would not pass
2 the audit -- the audit we review because the store has
3 been labeled as a typical liquor store that is -- that
4 sell liquor. And mostly liquor stores, they sell at this
5 higher level of markup.

6 And so that's why that exhibit is there to prove
7 that even as we go through this process, the State Board
8 of Equalization, they did not seem to understand that this
9 is unique type of store that is totally different from the
10 normal store. Another thing that was brought up during my
11 conversation with several different people -- I have gone
12 through maybe six different managers since this thing has
13 been in process. I have gone through maybe four different
14 auditors and three different supervisors both in State
15 Board of Equalization since that Department, and also in
16 the appeals department.

17 And my position has always been the same, that
18 your sample size -- the sample that you chose is totally
19 wrong. It's out of the standard division within statistic
20 sample, and your -- your document -- your own sample said
21 that it must be representative of the population. And
22 every auditor will tell you, whether we're doing this upon
23 judgement, we're doing this upon statistical sample, your
24 sample must be representative. That's the first thing.

25 If it's not representative, that sample cannot be

1 used for projection. That would be a totally wrong
2 approach. And I also point out that I used to work for
3 the State of Texas as a sales tax auditor for seven years.
4 And I -- I did an audit in which my -- my sample, there
5 was an extraordinary item in my sample that I failed to
6 take out.

7 And once the audit -- once the auditor pointed
8 out that that particular item is an extraordinary item, I
9 have to remove it from the population. Because, again, I
10 realize I was over -- my sample was not representative of
11 the population that I was putting it into because that one
12 item was really triggering my projection to be incorrect
13 within a true standard division, even though it was a
14 judgmental sample.

15 So, Your Honor, this is where we -- this is the
16 key element we're -- we are talking about here is that the
17 sample that was selected was totally incorrect, and the
18 Board definitely refuses. We tried always to ask them to
19 please remove those two samples. Use our sample, the four
20 month. We never said we don't owe money. We know we made
21 a mistake. We said, "Use the four months, and we'll be
22 okay." But they would not want to use the four months.
23 They want to commingle to charge us a higher amount of
24 money; money that my client never collected.

25 The final thing I want to bring to your notice,

1 Your Honor, before I end and -- and yield my time to you
2 back, Your Honor, is the fact that because of the derail
3 of the process by the State Board of Equalization, this
4 increase of -- compounded humongously [sic]. Like, it is
5 unbelievable. We just received a bill. My client just
6 called me. I think it was on Monday that she received a
7 bill for \$180,000 for assessment for this audit.

8 Again, I want to emphasis that the intent of the
9 State Board of Equalization was never to punish the
10 taxpayer for things that they didn't do, rather it was
11 help me collect the tax that is due them. So for them to
12 have this \$180,000, it seems to me that, again, refusing
13 to allow -- to use the right sample, it seems to me --
14 which I don't know if that is just the case, but it's just
15 my opinion -- that the audit department is trying to just
16 collect the money and assess other taxpayers. If my
17 client didn't have somebody like with astute to ask the
18 question, then that assessment would have gone and my
19 client would be punished unjustly.

20 So, you know, this audit started with about -- I
21 think with the first assessment was \$110,000 of
22 assessment. And I have gone in and showed where all the
23 errors have been, and we have limited it down to \$70 -- I
24 think it's \$76,000, excluding the double penalty that have
25 now -- the interest and penalty that have been assessed in

1 this audit. When there was an agreement that the penalty
2 would be waived totally at one of the hearings that we
3 had, I don't know what happened to that. And, again,
4 that -- this is all the mix up we're going through,
5 through the process.

6 So, Your Honor, I just wanted to point out again
7 as I end, that we truly believe that we owe some money.
8 We're not saying we don't owe money but we just -- our
9 point is, the sample size that was used by the Board is
10 not representative of my client's business and, therefore,
11 we are here to appeal that sample -- that two months be
12 taken out of the projection and use the four months that
13 we have selected that is representative of the population.

14 Thank you.

15 JUDGE WONG: This is Judge Wong. Thank you,
16 Mr. Blanshard.

17 I'm now going to turn to my co-panelists to see
18 if they have any questions.

19 Judge Aldrich, do you have any questions for the
20 Appellant?

21 JUDGE ALDRICH: Yeah. I have a small question.
22 So you mentioned that the store sells African food. What
23 kind of African food? Is it hot-prepared food? Is it
24 cold food? Is it canned food? What are we talking about
25 here?

1 MR. BLANSHARD: It's cold food. It's something
2 called Teff flour. Teff flour is like a dough that they
3 use, and they actually cook it and mix it up and -- and do
4 their own cooking. There is no cooked food in the store.
5 They don't have the capacity to do that. So they sell
6 the -- it's all uncooked African food.

7 JUDGE ALDRICH: And then are you asserting that
8 they sold that uncooked African food during the entirety
9 of the audit?

10 MR. BLANSHARD: Yes, Your Honor. Yes, they did.

11 JUDGE ALDRICH: Okay. Thank you.

12 JUDGE WONG: This is Judge Wong. Judge Long, do
13 you have any questions for the Appellant?

14 JUDGE LONG: This is Judge Long. Yes, I also
15 have a follow-up on the questions about African food. In
16 the briefing, you noted that the African food was
17 discontinued when the auditors arrived. Is there anything
18 in the record to show that during the audit period a
19 percentage of sales should be change based on nontaxable
20 African food?

21 MR. BLANSHARD: Arnold Blanshard here, Your
22 Honor. No, there's nothing. We're not -- we're just
23 bringing that up to show -- my point of making that point
24 is to show that our type of liquor store is unique to the
25 normal liquor store. That's what we're saying. We're not

1 adding that as an extra reduction to the spread because
2 they did take into account some of those African food. I
3 think the month that we're looking at here -- I think
4 there is two months they look at that there are some
5 African food purchase made. Yes.

6 JUDGE LONG: Okay. Thank you.

7 JUDGE WONG: This is Judge Wong. Thank you.

8 Mr. Blanshard, I also had a question. So you had
9 argued that the sample months were extraordinary. Why
10 were they extraordinary? What was the reason for why the
11 months were extraordinary?

12 MR. BLANSHARD: Arnold Blanshard, Your Honor.
13 The spread -- can you hear me?

14 JUDGE WONG: This is Judge Wong. We can -- I can
15 hear you.

16 MR. BLANSHARD: Okay. Thank you. Arnold
17 Blanshard again. The spread -- the month that was
18 purchased, there was no phone card purchase made. There
19 was a very tiny little bit of African food purchase that
20 was made during those two months that they selected. And
21 so, therefore, when they -- that's what caused the
22 95 percent of assessment for one month and there was 80,
23 83, 84 according to the month that they selected for the
24 spread between purchase and none-purchase items for those
25 two months.

1 Just to add to that also, we went back after the
2 fact and did a -- we did an inventory, an end inventory
3 refusing to accept any inventory that we have because we
4 didn't do an end inventory. Again, just a little mom and
5 pop shop. They don't have the capacity to be doing an end
6 inventory every month.

7 But they were complaining about that. So during
8 a point in time, we decided to do -- and let's just do an
9 end inventory count so they can have it. When we did
10 that, they are not going to accept because it's been too
11 far gone to -- the month and time has lapsed. And,
12 therefore, they're not going to accept that.

13 I forgot to mention another thing that was
14 critical also. When we were doing the -- and I put a
15 couple of items of that. We got thefts in the store. I
16 put a couple of exhibits there. I think it's my Exhibit A
17 or B. I can't remember which one it is now. But we
18 indicated to them that that store is highly vulnerable to
19 theft. However, they wanted us to give them a police
20 report. And we specifically told them that it's
21 impossible for us to give a police report based upon where
22 we are at.

23 If we call police on those guys, we -- the client
24 is putting his life in jeopardy, and it's going to be --
25 even they come there just to blow the place up. So we

1 have pictures of these individuals that were stealing
2 items from the store. But this, again, was like just
3 pulling a long hoe on the ground. This was also not --
4 was not accepted.

5 They said no. That, normally, it's just
6 1 percent and you should have a police report. They're
7 not going to accept that. So I put a couple of exhibits
8 there also as evidence to show that, again, the uniqueness
9 of this store in comparison to the normal -- they base
10 everything on the normal routine type of process that they
11 have.

12 JUDGE WONG: Thank you, Mr. Blanshard. This is
13 Judge Wong again. I just have one -- another question.
14 You had mentioned that there were no phone card purchases
15 for the months sampled by CDTFA. But it looks like in
16 Exhibit 5 you provided a chart about calling card
17 inventory purchases from July 2008, through December 2011.
18 And there looks like there are purchases every month,
19 including, I think, May 2009 and April 2010, which I think
20 is the month sampled by CDTFA.

21 MR. Blanshard: So the months that was selected,
22 one of the month I have no phone card. The other month I
23 have a phone card of \$1,000. And if you look at what the
24 purchases were for those phone cards in an average,
25 anywhere from 5 to 7 -- I can't remember again. I have to

1 look. I'm trying to pull up the information but, again, I
2 didn't want to waste your time. So I wasn't able to pull
3 it up. So just let me comment and just do what I have to
4 do. I didn't put -- I didn't put it.

5 But if you look at that -- if you look at that,
6 because I have a good memory. The dollar amount -- the
7 spread is really, really small. The two months they
8 selected is very, very low in comparison to our normal
9 months.

10 JUDGE WONG: Okay. So your saying it's not that
11 your client did not purchase phone cards that month but
12 purchased lower -- less phone cards than usual?

13 MR. Blanshard: Well, one of the months. The
14 other month is zero. I'm 100 percent certain. One of the
15 months we have \$1,000. I think it was \$1,000 they have in
16 their -- in their sample, and the other month was pretty
17 much nothing. Let me see if I could --

18 JUDGE WONG: This is Judge Wong. I will let you
19 take a look at that and we'll come -- on your rebuttal and
20 your closing you could address that question again. I'll
21 give you enough time.

22 MR. Blanshard: Okay. Yeah. If -- this is
23 Arnold Blanshard. If there is an amount there, it's a
24 very small amount, a really, really small amount. Look at
25 it.

1 JUDGE WONG: Thank you, Mr. Blanshard. This is
2 Judge Wong again.

3 Okay. CDTFA, would you like to proceed with your
4 presentation?

5

6 PRESENTATION

7 MR. SUAZO: This is Randy Suazo. The Appellant's
8 establishment is located in Inglewood, California. The
9 Appellant is selling beer, wine, liquor, soda, tobacco
10 products, periodicals, sundry items, phone cards, and
11 food. The Appellant's start date was July 7th, 2007.

12 The Appellant writes down daily sales from the
13 cash register into a notebook and gives it to the CPA.
14 The notebook sales amounts were used to prepare the sales
15 and use tax returns. The notebook was not available for
16 review. The Department performed an audited examination
17 for the period from July 1st, 2008 through June
18 30th, 2011. The Department compared gross sales for
19 federal income tax returns and profit and loss statements
20 to the Appellant's sales and use tax returns.

21 Differences were noted, however, no adjustments
22 were made. The Department conducted a purchase
23 segregation for the months of May 2009 and April 2010.
24 The Appellant disagreed with the findings in the initial
25 segregation because they claimed that the phone cards were

1 not concluded in the segregation, and that phone cards
2 made up a substantial amount of the exempt sales. In
3 order to account for this issue, the Department subtracted
4 all phone card purchases, Exhibit G, page 209 and 210.

5 During the audit period from the cost of goods
6 sold, Appellant reported on their federal income tax
7 returns. In addition, the Department gave a 1.5 percent
8 allowance to address supply items that may have been
9 commingled into the Appellant's federal income tax returns
10 cost of goods sold amounts, Exhibit G, page 154.

11 The two-month purchase segregation resulted in a
12 taxable purchase percentage of 86 percent, Exhibit G,
13 page 193, which was applied to the adjusted cost of goods
14 sold to obtain the amount of taxable purchases for the
15 applicable periods. A comparison of audited tax and
16 purchases through reported taxable sales for periods from
17 2008 through 2010 showed negative markups for each year
18 and an overall markup of negative 19.49 percent for
19 taxable products, Exhibit G, page 204.

20 Due to the negative markup, the markup audit
21 method was used to compute audited taxable measures. Once
22 the taxable cost of goods sold amounts were established,
23 the Department made an adjustment for taxable
24 self-consumption based on estimates provided by the
25 Appellant, Exhibit G, page 202 and 203. The Department

1 also granted Appellant a 3 percent pilferage allowance
2 after the Appellant claimed that theft was a problem for
3 their establishment.

4 Using the two-month purchase segregation, the
5 Department established weights for various taxable
6 categories: Beer, wine, liquor, carbonated drinks,
7 tobacco products, periodicals, and sundry items. The
8 Department then performed a shelf test on the
9 aforementioned taxable categories and applied markups
10 computed for each category to the appropriate weighted
11 purchase to arrive at a weighted taxable markup.

12 The Appellant did not agree with the selling
13 prices obtained by the auditor and performed their own
14 shelf test on the same items. The Department took prices
15 from both the Department's test and the Appellant's test
16 and averaged them out for each item in the wine, liquor,
17 tobacco, periodical, and sundry items -- sundry categories
18 and computed markups for each -- and computed markups for
19 those categories, Exhibit G, pages 167 to 177.

20 The Department, however, did not average the
21 markup for beer and carbonated drinks because the
22 Appellant seemingly applied an arbitrary 10 to 15 percent
23 markup on items selling -- on item selling price per -- on
24 item selling price prior to CRV inclusion. For this
25 reason the Department used the markup established solely

1 by the auditor's shelf test.

2 For beer markup, an adjustment was made for beer
3 sold in packs versus single sales concerning some bottle
4 versus can sales as the Appellant had claimed that the
5 ration of single selling prices were too high. This is on
6 Exhibit G, page 156 to 166. For carbonated drinks, only
7 single sales are accounted, as no case sales or displays
8 of cases for sale were in the store.

9 The Department further reduced the markups for
10 each category by 1 percent to make up for any time lag
11 when the shelf test conducted -- when the shelf test were
12 conducted against the purchase invoices they were applied
13 too. The computed markups for each category were applied
14 to weights established from the purchase segregation to
15 establish an overall markup of 35.06 percent, which is
16 accepted as reasonable for this industry, Exhibit G,
17 page 155.

18 The markup factor of 1.3506 was then applied to
19 the audited cost of purchases to arrive at audited taxable
20 sales. The audited taxable sales were then compared to
21 reported taxable sales and differences were noted. For
22 2008 the percentage of error was 52.57 percent. For 2009
23 the percentage of error was 51.65 percent. For 2010 the
24 percentage of error was 81.81 percent. And the overall
25 percentage of error was 60.84 percent, Exhibit G,

1 page 153.

2 The percentage of errors were then applied to the
3 reported taxable sales for appropriate periods. For
4 January 2011 through June 2011 period, the overall
5 percentage error was applied. During the audit process,
6 the Appellant had conducted their own four-month purchase
7 segregation, Exhibit G, pages 195 to 201. The periods
8 that they chose were December 2008, September 2009, March
9 2010, and June 2011.

10 An analyses segregation disclosed that when the
11 four months were analyzed and compared to the average
12 yearly purchases for 2008 to 2010, the purchases are
13 understated by almost 40 percent of what is expected. The
14 two-month audit segregation was within 90 percent of what
15 is expected using the same analyses. This is on Exhibit
16 G, page 189.

17 Review of the Appellant's purchase segregation
18 discloses that the purchasing pattern of beer vendors
19 appears to be incomplete. Historically, beer vendors are
20 on a weekly purchasing cycle, Exhibit G, page 195 to 201.
21 The purchase segregation conducted by the Appellant's
22 representative does not show the same weekly cycle that
23 the auditor's segregation showed. The missing purchases
24 distorts the taxable weights and the taxable to nontaxable
25 percentage, thereby, invalidating the Appellant's purchase

1 segregation to be used in the audited results.

2 In addition, the Department reviewed an inventory
3 count of third party performed on June 21st, 2012, and
4 found that over 95 percent of the inventory listed was of
5 a taxable nature. This is on the A36A, Exhibit G,
6 page 134.

7 Analyses of exempt sales disclosed the following.
8 Purchases of phone cards for 2009 and 2010 equaled
9 \$151,233. This is on Exhibit G, page 209. Review of the
10 Appellant's exhibits show a 40.46 percent markup on phone
11 cards when using the face value of the cards as a selling
12 price to the cost. This is from the taxpayer's provided
13 exhibits page 3 -- per Exhibit 3, page 4, and Exhibit 6
14 page 8. When applying this markup factor, the phone card
15 sales project out to \$212,421.

16 Reported exempt sales of \$885,465 were reported
17 for the same year period. When the projected phone card
18 sales are removed, food sales are \$673,044. Based on
19 audited food purchases of \$76,259 for 2009 and \$78,675 for
20 2010 for a combined amount of \$154,934. This is on
21 Exhibit G, page 204. The gross profit on food would be
22 \$518,110. And the markup of the food would be
23 334 percent.

24 The 334 percent is not a reasonable markup for
25 these items in this industry. The Appellant has not

1 provided any substantive documentation to support change
2 to the audit findings. Therefore, the Department request
3 that the appeal be denied.

4 This concludes my presentation. I'm available to
5 answer any questions you may have.

6 JUDGE WONG: This is Judge Wong. Thank you,
7 Mr. Suazo.

8 Judge Aldrich, do you have any questions for
9 CDTFA?

10 JUDGE ALDRICH: Not at this time. Thank you.

11 JUDGE WONG: This is Judge Wong again.

12 Judge Long, do you have any questions for CDTFA?

13 JUDGE LONG: This is Judge Long. I do not have
14 any questions.

15 JUDGE WONG: Thank you.

16 Okay. So now we will turn to Appellant,
17 Mr. Blanshard, again, for your rebuttal and closing
18 remarks. You have 10 minutes. Please proceed.

19

20 CLOSING STATEMENT

21 MR. BLANSHARD: Thank you, Your Honor. Arnold
22 Blanshard here. I think the State has not been truthful
23 in what they've said. They have jumbled up a lot of
24 things. I sit here and wonder why that is the case. I
25 mean, as an auditor, as a CPA, honesty and ethics is one

1 of the fundamental things that we have to play into factor
2 when we discuss items.

3 Let's start with the first untruthfulness that's
4 been produced here by the State. It seems like that what
5 they're saying is that at the beginning of the audit they
6 choose two months, and that two months was taken and
7 then -- no. That's not true. They did a projection based
8 upon their two months, and they assess us tax based upon
9 the two months. We went in and did our own four months
10 and proved to them that the two months is not
11 representative of the population.

12 And I think this is where the whole discord is.
13 All the mathematical jargon that's been said here is just
14 to confuse people. The 52 percent and 51 and all of those
15 numbers have been thrown into this untruthfulness of the
16 State to confuse an ordinary person who doesn't know
17 exactly what they're talking about. Let me -- let me
18 start by saying, if you have a population and you decide
19 to take a chunk of the population out, of course, you're
20 percentages are all going to be higher. Of course, your
21 base is smaller. That's mathematics. That's simple
22 mathematics.

23 And so what the State has done, they took away
24 all of the phone cards that we purchased, took it out of
25 the population, and then now use the base -- a smaller

1 base population. So that's a higher percentage that they
2 have from the two months. It's not going to work. That's
3 why you have all -- all of the projections that they have
4 given is based upon this mathematical error taking out all
5 of the phone cards out of the population.

6 A simple example would be if you already have a
7 finding that is 60 percent based upon the population and
8 the population -- your sample base only have \$1,000 phone
9 cards and then you decide to take that \$1,000 out of the
10 phone card and use that base, the percentage is going to
11 be higher, number one. And then the projection to this
12 other base is going to be higher. So this mathematical
13 that they're showing is really just to confuse an ordinary
14 person as to what the facts are.

15 The facts are very simple in this case. There is
16 a sample selected by the State. That is totally wrong.
17 It's not within the normal business of my client. They
18 decided that they are going to stick to that. They are
19 going to use that sample. When we started it, they
20 blended it. Now he said that the -- it was indicated here
21 that they didn't use the four months. Again, that's the
22 false pre -- false information. They did use the total
23 six months blended.

24 Now, I didn't even -- I wasn't even aware that
25 they took the four months out. This is news to my ears

1 that they did take the four months out and were only using
2 two months as the projection. But that was never
3 discussed in all -- through the process that we went
4 through. Every single one of those processes, it was
5 blended between the two and the four. But their
6 presentation seems to suggest that it's only the two
7 months that's been used. Again, if that is the case,
8 that's something new to me. I wasn't aware of that.

9 And then when it comes to the projection between
10 the phone cards and those other things that they're
11 talking about and used, again, it's based upon the
12 mathematical. When -- whenever you do a projection and
13 sample, you're going to have -- I could take a population
14 of things and I could give you a projection of numbers,
15 but it's based upon the data that I'm using.

16 If the data in the first is faulty, at the end
17 the results would be faulty. And so that's -- that's the
18 key element here. The data was faulty from the get go.
19 The State definitely refuses. We've pleaded. We show
20 them evidence. They still refuse to use the right data to
21 use the projection. And so of course, the projection is
22 all going to be all the things they have stated here.

23 Again, Your Honor, I have nothing else to say.
24 But like I said before, that sample of the two months
25 should not be accepted because it's out of the normal

1 projection that we normally have in our business. And
2 95 percent -- and -- and by the way, they stated that it
3 was 85 percent. And it started off about the purchase
4 segregation. No. The purchase segregation came after the
5 fact. The price -- the price -- the cost applies came
6 after the fact.

7 The fundamental issue was the purchase
8 segregation that was used. Because they indicated that we
9 didn't have the records for them to look at. That's not
10 true either. We have the book. The notebook was there
11 that we have to show that what the sales were that were
12 there.

13 And by the way, one thing that was just pointed
14 out. Our federal return, which is what we report to the
15 federal, and that's of the sales tax, there was an
16 indication that there was some -- some change. There was
17 some differences but no adjustment was made. I would like
18 to know why no adjustment was made because normally in the
19 audit manual, that's the first thing they do. They
20 compare what our sale is to the federal tax to make sure
21 that what we put in the federal tax is the same as what
22 our sale is.

23 If there was a discrepancy between the two, why
24 was there no adjustment made? Because again, what we did
25 not -- what was sold was reported. What was sold was

1 reported. Our sales on the sales tax was the same as on
2 the federal. And this was also stated that there was
3 no -- we have no error on the sales side because the
4 amount -- the gross sales that was reported on the sales
5 tax was the same. It was almost identical to what was
6 reported on the federal tax returns.

7 So I'm not understanding because of projection
8 there's an indication that okay, we made the mistake on
9 both reports, both on the sales tax and the federal tax.
10 And then the State decide to come up with this higher
11 amount of -- of -- of sales that we have, which you go
12 look at the store. The numbers that they have projected
13 is impossible for that store to sell that volume of sales.
14 You talk about them talking about all of these numbers
15 that they're showing here about, you know, this negative
16 percentage, 350 percentage --

17 Again, this is using false indicators to do
18 projections. Because the indication will be false because
19 the data that you're using is incorrect. And so that
20 is -- we never faltered on the fact that the sales match
21 each other. So you can't tell us that we underreported
22 our sales when you -- it states in the written documents.
23 Said the sales were what was reported were not a product.
24 It was more of the spread between the taxable and
25 nontaxable.

1 So I -- I'm a bit confused having this
2 presentation be made and giving all of these numbers and
3 all these projections that seems to be so unrealistic in
4 the type of business that we do. Again, if you're using a
5 normal liquor store as the bench mark for our liquor
6 store, definitely, you're going to have all these numbers
7 be negative.

8 Secondly, if you're using data that is totally
9 wrong, mathematically, if the data is wrong, the result is
10 wrong. And we have been in the position from the get go,
11 the data that was used by the State is totally incorrect.
12 Because again, that was not representative. So anything
13 that they, of course, they are going to have result of
14 something that is so outrageous. Because again, the data
15 from the get go is one that is not to be correct.

16 Thank you, Your Honor.

17 JUDGE WONG: This is Judge Wong. Thank you,
18 Mr. Blanshard.

19 I'll turn to my panelist one final time for any
20 questions. Judge Aldrich, do you have any questions?

21 JUDGE ALDRICH: This is Judge Aldrich. I have
22 one question for the Appellant's representative.
23 Regarding thefts, how much theft was occurring on a
24 monthly or daily basis?

25 MR. BLANSHARD: I'm not -- I won't be able to

1 give you exactly what that -- if I do that, I would be
2 giving you false information here. And like I said
3 before, my ethics comes before anything. I don't have
4 that information, but what we -- what we project, I think,
5 when we talked to them was a percentage for that -- for
6 that theft was to give us 3.5. And I think we are okay
7 with that. I brought it up just to tell you how much
8 trouble we've gone through the process. Yes, I cannot be
9 able to give you fully that information that you're
10 asking.

11 JUDGE ALDRICH: Thank you. I don't have any
12 further questions.

13 JUDGE WONG: This is Judge Wong. Judge Long, do
14 you have any final questions?

15 JUDGE LONG: This is Judge Long. Thank you. I
16 don't have any questions.

17 JUDGE WONG: Okay. Thank you.

18 This concludes the hearing. The record is
19 closed, and the case is submitted today. The judges will
20 meet and decide the case based on the exhibits presented
21 and admitted as evidence. We will send both parties our
22 written decision no later than 100 days from today.

23 The hearing is now adjourned. The next hearing
24 will begin in approximately 15 minutes.

25 I would like to thank both parties and their

1 representatives. Thank you.

2 (Proceedings adjourned at 9:58)

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I have hereunto subscribed my name this 3rd day
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